APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LOUIS E. CHATEL,
PLAINTIFF-APPELLANT,

v.

UNITED STATES OF AMERICA,
DEFENDANT-APPELLEE.

UNITED STATES OF AMERICA,
PLAINTIFF-APPELLEE,

v.

JAMES EMORY HALL CONTRACTORS, INC.;
JAMES EMORY HALL and JAMES W. GIVENS, Trustee,
DEFENDANT-APPELLANT.

No. 80-3460
DC No. CV 76-518V
No. 80-3497
DC No. CV 78-2012

MEMORANDUM

Argued and submitted — January 6, 1982

Decided — February 24, 1982

Chatel v. USA on Appeal from the United States District Court
for the Western District of Washington
Honorable E. Gordon West, District Judge, Presiding
USA v. Hall on Appeal from the United States District Court
for the District of Idaho
Honorable Ray McNichols, District Judge, Presiding

Before: ANDERSON and ALARCON, Circuit Judges, and
REDDEN*, District Judge.

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*The Honorable James A. Redden, United States District Judge for the District of Oregon, sitting by designation.

These are two actions[1] in which the taxpayers, Louis E. Chatel and James Emory Hall, appeal the imposition of penalty assessments under 26 USC §6672. The statute provides that a "responsible person" in a corporation shall collect, account for and pay over to the United States the federal income and social security taxes withheld from corporate employees. The "responsible person" who "willfully" refuses to perform these duties is personally liable for the full amount due and unpaid with interest charged from the date of assessment. The personal liability of the "responsible person" is totally independent of the corporation's liability. *Teel v. United States*, 529 F.2d 903, 906 (9th Cir. 1976).

For an individual to be liable under section 6672, two things must be established: (1) that the individual is the "responsible person" and (2) that the individual willfully refuses to pay the tax. *Id.* at 905. Willful in this context is defined as "voluntary, knowing and intentional even though it is not done with a bad purpose or an evil motive. . . ." *Barnett v. United States*, 594 F.2d 219, 222 (9th Cir. 1979). Voluntarily, consciously and intentionally preferring "other creditors over the United States constituted willful failure to pay over." *Teel v. United States*, 529 F.2d at 905, *quoting Sorenson v. United States*, 521 F.2d 325, 328 (9th Cir. 1975).

The taxpayers each conducted a corporate business that went into bankruptcy. Both taxpayers agree that they are the "responsible person" within the meaning of the statute, but argue that the entry of summary judgment in favor of the government was erroneous. Summary judgment is appropriate if there is "no genuine issue as to any material fact" and the movant is "entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

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[1]These separate appeals arise from separate districts. They involve similar legal issues and are therefore consolidated for disposition in a single memorandum.

Chatel argues that his waiver of the statute of limitations is ineffective and, hence, the government's assessment is not timely. He is incorrect. Chatel signed the waiver within the statutory period and upon the advice of counsel. The waiver operated to delay the imposition of the penalty and therefore benefitted him by delaying the accrual of interest on the penalty.

Both taxpayers rely, in part, on an estoppel theory. Chatel argues that the government's failure to attend a meeting of creditors and its failure to object to the bankruptcy court's allowing the government to recover less than its full claim estops the government from imposing the penalty on him.

Hall argues that the government's failure to object to the bankruptcy court's setting aside the assignment of certain profits to the government and the government's improper filing of its liens estops the government from imposing the penalty on him. Hall also argues that because the government acquiesced in the Corporation's delayed payments and because he relied on the government's representations that the liens had been properly filed, there are questions of fact which preclude the entry of summary judgment. We disagree with the arguments of both taxpayers. In *Teel v. United States*, our circuit rejected a similar argument:

> Finally, the appellants argue that because the government failed to exercise a priority of its lien over the assets of the Corporation in the receivership proceedings, it should be estopped from collecting the penalty from the appellants. A proceeding under Sec. 6672 deals with a totally independent liability from that of the corporation. The failure to exercise any rights in the proceeds does not establish an estoppel. . . .

529 F.2d at 906.

Hall relies on *Holcomb v. United States*, 543 F.2d 1185 (7th Cir. 1976) to argue that the assessment of the penalty is error because the government had agreed in writing to protect him from personal liabilty for the Corporation's liability. The reliance is misplaced. In *Holcomb*, the taxpayers alleged that the government had agreed to apply bankruptcy receipts to the

personal liability of the taxpayers and had breached that agreement. 543 F .2d at 1187. In contrast, Hall's agreement pertains solely to the corporate debt and corporate penalties; it does not refer to Hall's personal assessment under section 6672. We reiterate that with the passage of section 6672, Congress created a personal liability which is separate and distinct from the liability of the corporation.

In both of these cases the grant of summary judgment was not error. The judgements of the respective district courts are affirmed.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
PLAINTIFF-APPELLEE,

v.

JAMES EMORY HALL CONTRACTORS, INC.;
JAMES EMORY HALL and JAMES W. GIVENS, Trustee,
DEFENDANTS-APPELLANT.

No. 80-3497

ORDER

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

Before: ANDERSON and ALARCON, Circuit Judges, and REDDEN, District Judge.*

Appellant's petition for rehearing is denied.

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*The Honorable James A. Redden, United States District Judge for the District of Oregon, sitting by designation.